

**PT 99-22**

**Tax Type: PROPERTY TAX**

**Issue: Religious Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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<b>IMMANUEL LUTHERAN CHURCH</b>	)	<b>Docket #</b>	<b>96-55-2</b>
<b>Applicant</b>	)		
	)		
<b>v.</b>	)		
	)	<b>Parcel Index #</b>	<b>11-300-909-00</b>
<b>THE DEPARTMENT OF REVENUE</b>	)		
<b>OF THE STATE OF ILLINOIS</b>	)		

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Mr. Lawrence J. Kwacala appeared on behalf of the Immanuel Lutheran Church.

Synopsis:

The hearing in this matter was held at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois, on June 15, 1998, to determine whether or not McDonough County Parcel Index No. 11-300-909-00 qualified for exemption from real estate taxation for all or part of the 1996 assessment year.

Mr. Arnold Wendt, trustee of Immanuel Lutheran Church (hereinafter referred to as the “Applicant”), was present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant is a religious organization; secondly, whether the applicant owned this parcel during all or part of the 1996 assessment year;

and lastly, whether the applicant used the parcel here in issue and the house thereon as a parsonage during all or part of the 1996 assessment year.

Following the submission of all of the evidence and a review of the record, it is determined that the applicant is a religious organization. It is also determined that the applicant owned this parcel during the entire 1996 assessment year. Finally it is determined that this parcel and the house thereon were not used as a parsonage at any time during the 1996 assessment year.

It is therefore recommended that McDonough County Parcel Index No. 11-300-909-00 and the house thereon remain on the tax rolls and be assessed to the applicant, the owner thereof, for the 1996 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that this parcel did not qualify for exemption for the 1996 assessment year, was established by the admission in evidence of Department's Exhibit Nos. 1 through 6A.

2. On April 26, 1996, the McDonough County Board of Review transmitted to the Department an Application for Property Tax Exemption To Board of Review concerning the parcel here in issue for the 1996 assessment year. (Dept. Ex. No. 2)

3. On December 5, 1996, the Department advised the applicant that it was denying the exemption of this parcel because this parcel was not in exempt use. (Dept. Ex. No. 3)

4. By a letter dated December 9, 1996, Mr. Arnold Wendt, a trustee of the applicant, requested a formal hearing in this matter. (Dept. Ex. No. 4)

5. The hearing in this matter, conducted on June 15, 1998, was held pursuant to that request. (Dept. Ex. No. 5)

6. The applicant acquired this parcel and the residence thereon by a warranty deed dated December 20, 1973. (Dept. Ex. No.2D)

7. This parcel is approximately one-half mile from the applicant's church. (Tr. p. 17)

8. The applicant was incorporated pursuant to the “General Not For Profit Corporation Act” of Illinois for purposes which include the following:

The purpose of this corporate body shall be that of a religious organization; more specifically, that of a Christian congregation, established and maintained for the express purpose of disseminating the Gospel of Christ according to the confessional standard of the Lutheran Church, the Book of Concord of the year 1580. (Appl. Ex. No. 2)

9. It has been a condition of employment of the pastors of the applicant since this parcel was acquired that they live in the house on this parcel. (Tr. p. 8)

10. Pastor Jeffery Baxter was called to be the pastor of the applicant during March 1993. He lived in the house on this parcel until December 1993, when he advised the applicant that the house was unsuitable and requested to be allowed to move out and to be paid a parsonage allowance. (Tr. p. 9, Dept. Ex. No. 2E)

11. Since the applicant needed money to pay the parsonage allowance for Rev. Baxter, an attempt was made to sell this parcel and the house thereon. The appraisal of the house on this parcel came in lower than the applicant had anticipated. Since there was a need for rental housing in Macomb, the applicant decided to rent this house. (Tr. pp. 9 & 10)

12. The applicant rented the house on this parcel to a Japanese executive of the Bower Roller Bearing Company. This rental for profit began in March 1994, and terminated at the end of February 1996. (Tr. pp. 11 & 12, Appl. Ex. No. 3)

13. The applicant placed this parcel back on the tax rolls during the time that the house was rented to the executive of the Bower Roller Bearing Company. (Tr. p. 13)

14. The pastors of the Lutheran Church Missouri Synod who serve the applicant and the other parish with which it is joined, which is the Lutheran Student Center at Western Illinois University, are appointed by a bishop of the denomination. (Tr. p. 11)

15. The applicant began to search for a new pastor with the help of the denomination as soon as Rev. Baxter resigned. A new pastor was not called to serve the applicant and did not move into the house on this parcel until August 1997. (Tr. p. 15)

16. During the period March 1, 1996 when the rental of this house by the applicant ceased until December 31, 1996, the house on this parcel was occasionally used by Rev. Paul Koschmann, who was the interim pastor of the applicant. (Tr. pp. 18-20)

17. Rev. Koschmann was a retired pastor of the Missouri Synod Lutheran Church who lived in Jacksonville, Illinois. Pastor Koschmann's responsibilities included teaching a confirmation class on Wednesday afternoons at the applicant's church. It was his custom to drive to Macomb on Wednesday mornings and conduct church business during the morning. He would then go to the house on this parcel around noon and rest before teaching the class in the afternoon. (Tr. pp. 18 & 19)

18. During 1996, Rev. Koschmann conducted worship services on Sunday mornings at the applicant's church at 8:30 A.M. and at the Lutheran student center at Western Illinois University at 11:00 A.M. (Tr. p.23, Appl. Ex. No. 3)

19. During 1996, the average attendance at the worship service at the applicant's church was 100 to 110 persons. The average attendance at the worship service at the Lutheran student center was 40 to 60 persons. (Tr. p. 23)

20. When bad weather was forecast for Sunday morning, Rev. and Mrs. Koschmann would drive up from Jacksonville on Saturday evening so as to be ready for Sunday morning worship services. (Appl. Ex. No. 3)

21. During the six weeks of lent and the three weeks of advent there were Wednesday evening services at the applicant's church which required Rev. Koschmann to stay over in the house on this parcel on Wednesday evening. (Appl. Ex. No. 3)

22. When Rev. Koschmann could not conduct the religious services on Sunday, it was his responsibility to arrange for a substitute. He would arrange for a student from the Lutheran Seminary in St. Louis to come up and conduct the Sunday services. These students would invariably drive up from St. Louis on Saturday and stay over in the house on this parcel to be ready for Sunday morning. (Tr. pp. 17 & 18)

23. During the period of March through December 1996, the only furniture in this house was a lamp, and easy chair in the northwest portion of the living room, a stove and refrigerator in the kitchen, and a bed in the master bedroom. The easy chair, lamp and bed were on loan from members of the applicant's church. (Tr. pp. 21 & 26)

24. It is the practice of Lutheran pastors, when they move into a parsonage to bring their own furniture, except for the stove and refrigerator which are furnished by the church. (Tr. p. 26)

25. During the period March 1996 through December 1996 youth activities, Sunday school classes, church meetings, and other church activities were all conducted at the applicant's church. (Tr. p. 22)

#### Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992).

Concerning property used for religious purposes, 35 **ILCS** 200/15-40 exempts certain property from taxation as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to profit, is exempt, including all such property owned by churches or religious institutions or denominations and used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches or religious institutions or

for such religious denominations, and including the convents and monasteries where persons engaged in religious activities reside. A parsonage, convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the church, religious institution, or denomination requires that the above listed persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). It is therefore very clear that the burden of proof is on the applicant to establish that it is entitled to an exemption.

In the case of McKenzie v. Johnson, 98 Ill.2d 87 (1983), the Illinois Supreme Court first concluded that the parsonage exemption stated hereinbefore met the constitutional requirements of Article IX, Section 6. In so doing the Court concluded that if a property is primarily used for a religious purpose, it may incidentally be used for a secular or residential purpose. The Court then went on to recite the standards set forth in MacMurray College v. Wright, 38 Ill.2d 272 (1967), which, it applied to parsonages and which read as follows: first, do the pastor's duties require him to live in close proximity to the church; or secondly, does it have unique facilities for religious worship and instruction or is it primarily used for religious worship or instruction. It has been established that this parcel and the house thereon are about one-half a mile from the

church. Consequently the house on this parcel does not meet the first MacMurray College standard. The evidence also established that there were no unique facilities in the house for religious worship or instruction. Finally, no evidence was offered that this house was primarily used for religious worship or instruction. In fact, during the period March through December 1996, there was very little furniture in the house and the evidence clearly established that it was not used for church meetings, youth activities, or Sunday school. The foregoing activities were all held at applicant's church according to the testimony.

The use of the house on this parcel by the called pastors of the applicant, since it was a condition of their employment that they live in this house, qualified for an exemption for prior years pursuant to 35 **ILCS** 200/15-40 hereinbefore set forth. During 1996, the evidence established that Rev. Koschmann lived in Jacksonville and only used this house as a convenience for occasional overnight accommodations or an afternoon rest. The seminary students, who lived in St. Louis, used this house as a convenience for overnight accommodations. I therefore conclude that this parcel and the house thereon were primarily used for residential purposes and did not qualify as a parsonage during the period March through December 1996.

I am aware of the decision in Our Savior Lutheran Church v. Department of Revenue, 204 Ill.App.3d 155 (5<sup>th</sup> Dist. 1990), in which the Court held that a parsonage which had been a parsonage for a long time continued to qualify for exemption during a period when no pastor was living in it. That case is distinguishable from the case here in issue because here the applicant had made a business decision to rent the parsonage for profit and in fact did so for two years during the interim period between pastors. The house on this parcel was properly back on the tax rolls and assessed to the applicant during that two-year period. Illinois Courts have consistently held that the use of property to produce income is not an exempt use, even though the income is used for exempt purposes. People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924). *See also* The Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (2<sup>nd</sup> Dist. 1988), leave to appeal denied.

I consequently conclude that this parcel and the house thereon did not qualify for exemption during January and February 1996, when it was leased for profit, or during the period March through December 1996, when it did not qualify as a parsonage.

I therefore recommend that for 1996, McDonough County Parcel Index No. 11-300-909-00 remain on the tax rolls and be assessed to the applicant, Immanuel Lutheran Church, the owner thereof.

Respectfully Submitted,

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George H. Nafziger  
Administrative Law Judge  
February 16, 1999